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No. 01-419

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2001

CITY OF COLUMBUS, MITCHELL BROWN,
AND BOBBIE DEAVERS
PETITIONERS,

V.

OURS GARAGE AND WRECKER SERVICE, INC., AND
THE TOWING AND RECOVERY ASSOCIATION OF OHIO,
RESPONDENTS.

ON WRIT OF CERTIORARI FROM THE
UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF OF THE *AMICUS CURIAE* CALIFORNIA DUMP TRUCK OWNERS ASSOCIATION IN SUPPORT OF RESPONDENTS

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INTEREST OF THE AMICUS CURIAE[1]

The California Dump Truck Owners Association (hereinafter "CDTOA"), founded in 1941, is a California non-profit corporation. CDTOA is a state-wide trade organization with a membership that includes approximately 1500 motor carriers of property, i.e., dump trucking and construction trucking companies located throughout the State of California. CDTOA members are involved with hauling construction commodities and construction equipment. CDTOA membership accounts for approximately twenty-five percent (25%) of the construction trucking companies and seventy percent (70%) of the construction trucking equipment now operating within California.

The members of CDTOA are subjected to a myriad of local size and weight regulations throughout California imposing varying restrictions on their motor carrier operations. Those restrictions, in the form of permit fees or route restrictions imposed by local governments, result in a substantial increase in travel time and cost of operation for the members of CDTOA.

The California legislature has delegated to local governments the State's authority to license and regulate commercial vehicles. Cal. Govt. Code § 21100(b). By various statutes, the State of California has also delegated to local governments the authority to impose highway route controls or limitations, or prohibit the use of certain roads,

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[1] Both the petitioners and respondents have consented to the filing of this brief. The letters of consent are on file with the Clerk's office. Pursuant to Supreme Court Rule 37.6, counsel for the *amicus curiae* hereby certifies that this brief was not authored in whole or in part by counsel for any party, and that no person or entity, other than the *amicus*, their members, or their counsel, has made a monetary contribution to the preparation or submission of this brief.

based on the size or weight of motor vehicles. *See* Cal. Veh. Code § 35701, Cal. Govt. Code § 21101(c), and Cal. Veh. Code § 35712.

Last year, CDTOA petitioned for, and obtained, a federal district court declaratory judgment finding several California statutory provisions delegating to local governments the authority to impose route controls or limitation based on the size or weight of the motor vehicle to be preempted by 49 U.S.C. § 14501(c)(1). *Cal. Dump Truck Owners Ass'n v. Davis*, 172 F.Supp.2d 1298 (E.D. Cal. 2001). In doing so, the district court, following the prior decisions of the Eleventh, Ninth, Sixth, and Fifth circuits, held that the "safety regulatory exception [found at 49 U.S.C. § 14501(c)(2)(A)] does not extend to local ordinances." *Id.* at 1303. The court continued to say, "By logical extension, the safety regulation exemption also does not extend to California Code provisions which authorize local ordinances." *Id.* The government defendants have appealed that ruling. *Cal. Dump Truck Owners Ass'n v. Davis*, *supra*, *appeal docketed*, No. 01-17435 (9th Cir., December 10, 2001).

The members of CDTOA seek to secure judicial enforcement of Congress' express preemption of the multitude of regulations and restrictions imposed by *local* California governments on their motor carrier operations. The decision of this Court in the case at bar will likely be determinative of the pending Ninth Circuit appeal in *Cal. Dump Truck Owners Ass'n v. Davis*, *supra*, and will dictate whether members of CDTOA will continue to be subject to oppressive, non-uniform local truck regulations. For those reasons, CDTOA has a direct interest in the issues raised in this case and submits this brief in support of affirmance of the decision below in order to assist the Court in addressing

fundamental legal issues in this case that are of paramount importance to motor carriers other than tow truck businesses. Because CDTOA is a party to the ongoing Ninth Circuit litigation, it is particularly well-positioned to address these issues in an informed and useful fashion.

SUMMARY OF THE ARGUMENT

CDTOA submits this brief as *amicus curiae* in support of affirmance. Its argument is limited to issues raised by Petitioners relating to the district court ruling in *Cal. Dump Truck Owners Ass'n. v. Davis*, 172 F.Supp.2d 1298 (E.D. Cal. 2001).

Affirmance of the Sixth Circuit's interpretation of 49 U.S.C. § 14501 will not lead to confusion or to the "odd" interpretation or "common sense" problems that concerned the Court in *Field v. Mans*, 516 U.S. 59 (1995). The Sixth Circuit's interpretation parallels the intent of Congress to alleviate intrastate motor carriers of the morass of local truck regulations in favor of uniform state-enacted regulations. Affirmance of the lower court's holding that the first clause of § 14501(c)(2)(A) does not permit a city to regulate with regard to the safety of tow trucks, will not, as a consequence of the logical extension of that holding to the second clause of § 14501(c)(2)(A), require "state legislature[s] to examine every street in every municipality [and] then enact routing rules appropriate to each." Pet. Br. 28.

Furthermore, § 14501(c)(2)(A) does not preclude local government enforcement of state laws relating to motor carrier safety, or highway routes or restrictions.

The decision of the Court of Appeals should be affirmed.

ARGUMENT

The central issue in this case is whether 49 U.S.C. § 14501 permits political subdivisions of States to regulate tow trucks in matters of safety. The determination of that issue is grounded primarily in the statutory construction of 49 U.S.C. § 14501. CDTOA asserts that the arguments in support of the construction of the statute advanced by the court below are adequately addressed by Respondents in their brief, and will not be repeated or restated herein. Sup. Ct. R. 37 (an *amicus curiae* brief that addresses matters already brought to the attention of the Court by the parties "burdens the Court" and is "not favored").

However, in support of their argument that the lower court's application of *Russello v. United States*, 464 U.S. 16 (1983) was in error, Petitioners have asserted that, in many ways, the *Russello* analysis leads to "common sense" problems. Pet. Br. 26. One of those problems, according to Petitioners, is that the lower court's reading of § 14501 as it applies to tow truck operations also undermines a city's ability to enact size and weight route restrictions. They argue that the same *Russello* analysis used by the Sixth Circuit in holding that the *first clause* of § 14501(c)(2)(A) does not permit a city to regulate with regard to the safety of tow trucks would logically apply to the *second clause* of § 14501(c)(2)(A) concerning "the authority of a State to impose highway route controls or limitations based on the size or weight of the motor vehicle." *Id.* Petitioners contend that if municipalities may not regulate highway routes within their own jurisdictions based on the size and weight of

vehicles, state legislatures would have to undertake a review of "every street in every municipality" to determine the need for route restrictions. They insist that the *Russello* inference leads to an "odd" interpretation. Pet. Br. 26. Because Petitioners rely, in part, upon the district court's ruling in *Cal. Dump Truck Owners Ass'n. v. Davis*, 172 F.Supp.2d 1298 (E.D. Cal. 2001), for support of that argument, CDTOA is compelled to respond because of its interest in the pending litigation on those issues.

I. Section 14501(c)(2)(A) Properly Undermines Local Size and Weight Route Regulations, to the Extent that Such Was Intended by Congress.

Petitioners state that, in addition to preempting the regulatory authority of local jurisdictions with respect to motor vehicles of property, the district court's interpretation of § 14501(c)(2)(A) "undercuts" a city's ability to enact its own size and weight route restrictions on motor vehicles. Pet. Br. 27-28. Although the petitioners' argument is somewhat overstated, it is nonetheless an accurate assessment of both the district court's interpretation which is, in turn, an accurate assessment of Congress' intent.

A. Congress Clearly Intended to "Undercut" a City's Ability to Enact or Enforce Its Own Size and Weight Laws.

Some factual background will serve to put the import of the law into perspective. The stifling effects of local government regulations upon the construction trucking industry is, perhaps, one of the best examples of the evils addressed by Congress when it enacted 49 U.S.C. § 14501. Construction trucking work is primarily contract-based. For example, a dump truck company will subcontract to a general contractor to deliver construction materials to, or haul

materials from, a construction site. The projected route of the dump truck company is to and from the construction site (Point A) to a land fill or quarry (Point B). Depending on the size of the construction project, the dump truck company can anticipate several trips each day between Points A and B for the duration of the contract. Many factors will dictate the most efficient route between Points A and B, including traffic volume, roadway design (e.g. four-lane divided highways are preferred to residential thoroughfares), roadway integrity, and distance between Point A and Point B. Of course, a construction trucking bid price is based, in part, upon the expectation that the most efficient route will be utilized by the construction trucking company during the duration of the contract.

The unfortunate experience of many construction trucking companies has been that, after a project is underway, a local government entity, acting pursuant to delegated state authority, will enact a local ordinance prohibiting, or somehow restricting, the use of the most efficient roadways by the construction trucking company. [2]

As should be evident, such road closures by local governments have a devastating financial impact on construction trucking. As a consequence of road closures, or restrictions, construction trucking companies are forced, on a daily basis, to resort to less efficient, circuitous routes for hauling between Points A and B that were not anticipated at the time of the bid. This necessarily increases their costs of

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[2] *See, e.g.*, § 10.24.055 of the Santee Municipal Code (restricting the routes of trucks of more than fourteen thousand pounds to only ten streets within that municipality); § 10.12.010 of the San Jacinto Municipal Code (requiring truckers to pay a permit fee to use certain throughways); and § 72.234.29 of the San Diego County Code (restricting approximately five miles of Gopher Canyon Road to truck traffic under seven tons).

operation and diminishes, or eliminates, projected profit margins.[3]

It was against that background of operationally stifling and economically repressive — to use Petitioners phrase, "classically-local," — size and weight restrictions, that Congress enacted § 14501(c)(1) and deregulated the intrastate motor freight industry.

The public policy interests Congress sought to implement in enacting § 14501(c)(1) are set forth in the Conference Report:

> [T]he conferees believe preemption legislation is in the public interest as well as necessary to facilitate interstate commerce. State economic regulation of motor carrier operations causes significant inefficiencies, increased costs, reduction of competition . . . and curtails the expansion of markets ... The sheer diversity of these regulatory schemes is a huge problem for national and regional carriers attempting to conduct a standard way of doing business.

H.R. Conf. Rep. No. 103-677, at 85, 87 (1994), *reprinted in* 1994 U.S.S.C.A.N. 1759.

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[3] Interestingly, the California legislature acknowledged the local dilemma faced by construction trucking companies described herein when it enacted Cal. Veh. Code § 35716, which provides that any ordinance adopted by a city to decrease weight limits shall not apply to vehicles operated by a construction contractor while in use on a *public works project* if the bids were opened prior to the adoption of the ordinance "unless an alternate *direct route* is provided substantially within and by the city enacting the ordinance." (Emphasis supplied).

Section 14501(c)(2)(A), providing that only *State governments* may continue to regulate in matters of truck safety, and highway routes based on size and weight, is a manifestation of the intent of Congress. The whole point of § 14501(c)(1) was to eliminate burdensome, costly, and duplicitous regulations that had been historically imposed upon intrastate motor carriers. *See, generally*, "Congress Prepares to Lighten Truckers' Regulatory Load," *Congressional Quarterly*, August 6, 1994 at 2236. In 1994, the construction trucking industry might have served as the poster child for an intrastate trucking industry burdened by a hodgepodge of local trucking regulations. Congress accomplished its objective of eliminating the sheer diversity of trucking regulations in § 14501(c)(1) by preempting all economic regulations of motor carriers of property, then consolidating truck safety regulations within a single governmental authority -- the States. There is certainly nothing "odd" or unusual about Congress doing that. *See, e.g., CSX Trans. v. City of Plymouth, Michigan*, 86 F.3d 626 (6th Cir. 1996) and *Grand Trunk Western RR Company v. City of Fenton*, 482 N.W.2d 706 (Mich. 1992) *cert. denied* 507 U.S. 1050 (1993)(Federal Railroad Safety Act prohibits local but not state regulation of train speeds).[4]

"[I]t is reasonable to assume that Congress decided that safety and insurance ordinances [and highway route restrictions based on size and weight] must be enacted on a statewide level, in order to minimize the disturbance to the motor transportation industry that a patchwork of local ordinances would invariably create." *R. Mayer of Atlanta,*

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[4] The California legislature has also expressed a policy favoring state-wide uniformity in motor vehicle regulations. Cal. Veh. Code § 21 provides that the state's motor vehicle laws, including the size and weight laws, shall be "applicable and uniform throughout the State and in all counties and municipalities therein, and no local authority shall enact or enforce any ordinance on the matters covered by this code unless expressly authorized herein." *Id.*

Inc. v. City of Atlanta, 158 F.3d 538, 546 (11th Cir. 1998). A conclusion by this Court that States may delegate their preserved authority over motor carrier safety and, by logical extension, their authority with respect to highway route controls or limitations based on the size or weight of a motor vehicle, would completely eviscerate Congress' intent with regard to motor carrier regulation.

B. Petitioners Overstate the District Court's Ruling in *Cal. Dump Truck Owners Ass'n v. Davis*.

Petitioners state that the federal district court in *Cal. Dump Truck Owners Ass'n, supra*, applying the same logic as the Sixth Circuit in this case, held all state statutes purporting to delegate authority preempted and "ultimately invalidated *all* local traffic-control laws as applied to intrastate motor carriers." Pet. Br. 28. (emphasis in original). Petitioners suggest that under the Sixth Circuit's view of § 14501(c)(2)(A) a municipality may not even issue a motor carrier of property a citation for traveling the wrong way on a one-way street in violation of a municipal ordinance. Petitioners are simply wrong.

First, the district court's ruling in *Cal. Dump Truck Owners Ass'n, supra*, did not invalidate *all* local traffic-control laws as applied to intrastate motor carriers. That court only found certain California statutory provisions delegating to local governments the authority to impose route controls or limitation based on the size or weight of the motor vehicle to be preempted by 49 U.S.C. § 14501(c)(1). General laws relating to all motor vehicle operations, e.g. speeding and other "rules of the road," are not at issue in *Cal. Dump Truck Owners Ass'n*.

Secondly, local traffic-control laws of general application to all motorists are, if fact, not preempted by 49 U.S.C. § 14501(c)(1). Although Section 14501(c)(1) forbids local governments from enacting or enforcing local laws related to the price, route or service of any motor carrier of property, that is not to say that local governments may no longer regulate motor carriers of property in any manner whatsoever. In order to be preempted, the local law in question must have a "connection with or reference to" motor carriers of property. *See Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 385 (1992). A local law may be "too tenuous, remote, or peripheral" to the preempted conduct to be implicated. *See American Airlines, Inc. v. Wolens*, 513 U.S. 219, 224 (1995). Local traffic-control laws do not have a sufficient nexis to the price, route or service of motor carriers of property such that they are preempted under § 14501(c)(1). In other words, local traffic-control laws do not require an exception under 49 U.S.C. § 14501(c)(2)(A) in order to be enforceable by local governments; those laws simply are not preempted.

Petitioners also contend that unless local governments can continue to impose their own highway route controls or limitation based on the size or weight of the motor vehicle the States will be required to examine "every street in every municipality" to determine the need for highway route controls or restrictions. Pet. Br. 28. That alarmist contention is clearly misplaced. There is no more need for States to review and replace every preempted local truck size and weight law with a state law than there is a need for States to review and replace every preempted local truck safety law with a corresponding state law. Every State has already enacted uniform, state-wide vehicle size and weight laws. *See, e.g.*, Cal. Veh. Code § 35000, *et seq.* Those size and weight laws can be enforced by both state and city officials

(*see* II, below). In the event there may be a need for deviation from those uniform state-wide vehicle size and weight standards, based on a specialized local concern, a State could easily implement an administrative procedure through which a county or municipality might petition for a State-authorized highway route restriction in response to its local need. Importantly, and in keeping with Congress' expressed policy of eliminating inefficiencies and cost to intrastate motor carriers, all matters of highway route restrictions based on size and weight concerns would be centralized within the *State* government.

In fact, in California, such a procedure is already in place. Cal. Veh. Code § 35702 provides that no city may, by ordinance, prohibit the use of a state highway, or any highway not within its exclusive jurisdiction, by commercial vehicle or vehicles exceeding a maximum gross weight limit "until the ordinance has been submitted by the governing body of the local authority to, and approved in writing by, the Department of Transportation." *Id.* That existing mechanism for State review and approval of local vehicle size and weight restrictions could quite easily be extended to streets and highways that are within the exclusive jurisdiction of a city or county.

Petitioners cry that Congress would never have approved of such an "administratively awkward and ultimately counter-productive regime." Pet. Br. 28. Just to the contrary, however, in 1994 Congress eliminated the "classically-local" counter-productive regime, described above, in favor of uniform state size and weight regulations.

II. Section 14501(c)(2)(A) Does Not Prohibit a Municipality from Enforcing Safety or Size and Weight Laws Enacted by a State.

Petitioners suggest that, under the lower court's interpretation, *local* government police agencies could never enforce *state* safety laws. This is so, they argue, because the general preemption provision, § 14501(c)(1), mandates that "a State [or] political subdivision of a State ... may not enact or enforce a law [or] regulation ... having the force and effect of law related to a price, route, or service of any motor carrier [of property]." Petitioners would construe that general preemption clause to read that a municipality may no longer "enforce" *any* motor carrier law or regulation, even one enacted by a State. According to Petitioners, if the safety exception of § 14501(c)(2)(A) reinstates only *the State's* authority to "enact" and *"enforce"* laws regulating the safety of commercial motor vehicles, then those state safety laws can only be enforced by *state* police officials. Pet. Br. 26.

Petitioners' reading of § 14501(c)(1) is strained. The more reasoned construction of that clause is that a municipality may no longer enforce *its own* laws or regulations relating to the price, route or service of motor carriers of property, but is not foreclosed from enforcing state laws on safety, size and weight that are preserved to the States under § 14501(c)(2)(A).

Lending credence to the latter construction is Congress' use of the conjunctive phrase "enact or enforce." A city can only "enact" *municipal laws and regulations*. Therefore, reading the conjunctive phrase together, and not disjointed as have Petitioners, the more sensible construction of § 14501(c)(1) is that a political subdivision may not "enact or enforce a *[municipal]* law" relating to the price, route or

service of any motor carrier of property. But nothing in § 14501(c)(1) prohibits cities from enforcing the *State* safety or size and weight laws preserved to the States in § 14501(c)(2)(A).

CONCLUSION

The members of CDTOA, like many other intrastate motor carriers of property, have suffered too long under a cobweb of duplicitous, costly, inconsistent, and largely unnecessary, local regulations imposed on their intrastate trucking operations by cities and counties throughout the State of California. The judgment of the court below should be affirmed.

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